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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,323	07/24/2003	William A. Miller	29891/FMP0385	1330

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT PAPER NUMBER

1723

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/626,323

Applicant(s)

MILLER, WILLIAM A.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2 sheets 1-11-05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 02/15735 in view of Miller 6767126.

WO 02/15735 (WO'773 Document, D1 as referred to in the PCT written opinion) discloses (the references in parenthesis applying to this document):
a method of mixing a cosmetic preparation at a point of sale (see abstract),
comprising: providing a container, adding a first base suspension (page 4, lines 7-8),
adding one or more suspensions comprising one or more colorants on top of the first base suspension (page 4, lines 9-10, it is noted that the performance agent can be a colorant, see page 8, lines 18-19), adding a second base suspension on top of the one or more suspensions comprising one or more colorants (page 4, lines 19-24, noting that the second class of performance agents, or the second vehicle in which they are delivered is considered as the second base suspension), dosing the product into a container, and mixing the product until it is uniform (page 5, lines 5-6).

The WO '735 discloses all of the recited subject matter as defined within the scope of the claims with the exception of the particular step that the lid is closed prior to mixing, whereby the reference may encompass the scope of mixing in the container (for

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example by the method technique to Krauss et al 4871262, presently cited, not applied art by the examiner)

The reference to Miller (6767126 with a filing date of March 19, 2002) discloses a gyroscopic mixing device which has a holder sleeve 22, 22a which may hold various container sizes (not shown). Miller teaches that this device may be useful in particularly a cosmetic and paint operation, column 3, lines 61-64.

Thus the reference to Miller brings out a motivation to mix a container of cosmetic with a manipulation of the use of a gyroscopic type dual axis of rotation mixer, as shown by Miller. Nonetheless, Miller does not explicitly refer a desire to close the container before placing it in the container holder 22a, 22b.

However, in the art of paint mixing, it is known to use the following steps at a retail store (point of sale environment) in which a base paint is chosen and then tinted to a desired matching color, it is a known technique to open the can of base color paint, then add a determined tint color to the base paint on the surface of the base paint in the can itself, close the can of paint with a lid by plugging the end of the can having an opened aperture which provides access to the interior of the paint can, and then place the paint can in a paint mixing machine of some sort such as a shaker or a gyroscopic mixer. A person having ordinary skill in the art would surely realize that if the can of paint is not covered by a lid, once the mixing operation is performed, the paint and tilt would be expelled from the can itself. This would produce an undesirable effect in producing a mess of paint and tint in which the operator must clean up, and additionally leaving the purchaser at the point of sale the unwanted result of feeling unhappy since

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the paint mixture has left the container and is now unavailable within the can such that the purchaser may bring the paint home to apply upon a wall.

Therefore, in application of the Miller reference and suggestion that a gyroscopic mixer may be used in mixing cosmetic containers, and in view of the common knowledge of the need of mixing containers to be covered with a lid when placed in a mixing machine to prevent spillage, it is deemed that it would have been obvious to one of ordinary skill in the art to provide the manipulative step of the WO '735 reference with the additional steps of plugging the container with a lid, and mixing the mixture by the use of a gyroscopic mixer as suggested by the Miller reference in order to produce a more homogenous blend of the cosmetic product.

With regards to the materials used in the suspension, such materials are old and well known in the cosmetic art, thereby absent any unexpected results, a choice of such types material and number of materials would have been obvious to a person having ordinary skill in the art to produce the desired cosmetic tint or effect.

Conclusion


3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Karjalainen 3880408 teaches that another type of gyroscopic arrangement for mixing at a point of sale environment. Krauss et al 4871 262 teaches the dispensing of cosmetic blend into a container. The following discuss cosmetic blending: Rigg et al 5785960 and 5622692, Fox 6202895, Klein 5163010.

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4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7:00 AM - 5:00 PM, Tues. - Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tony G Soohoo
Primary Examiner
Art Unit 1723
